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November 19, 2021

VIA CM/ECF

Honorable Mary Kay Vyskocil
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 2230
New York, NY 10007

Re: *Goureau, et al. v. Lemonis, et al.*; Case No. 1:20-cv-04691-MKV
Follow-up Regarding Notice of Voluntary Dismissal and Letter-Motion for Extension

Honorable Judge Vyskocil:

Although ML Defendants¹ hesitate to burden the Court with another letter, we feel compelled to alert the Court about Plaintiffs' complete lack of candor in its filings with the Court and its correspondence with counsel today. After ML Defendants filed their objection and response (Dkt. No. 93) to Plaintiffs' Notice (Dkt. No. 91) and their Extension Request (Dkt. No. 92), we learned that Plaintiffs had already commenced an action against ML Defendants, Machete, and others in New York state court *yesterday*, November 18, 2021. A copy of Plaintiffs' New York state court complaint is annexed hereto as **Exhibit A**.

Plaintiffs commenced this action in New York state court despite stating in their Notice filed today "that they *intend* to re-file their claims in New York state court" Dkt. No. 91 (emphasis added). Similarly, in their Extension Request, Plaintiffs stated that the Court's rulings "counsel in favor of bringing Plaintiffs' claims in state courts [sic]." Dkt. No. 92. Yet, despite telling the Court that they merely *intended* to file in New York State court, Plaintiffs had already done so. Plaintiffs also neglected to disclose this information in their correspondence with Defendants. Dkt. No. 93-1.

The reasons for Plaintiffs' lack of candor are clear. Plaintiffs' new complaint in New York state court contains many causes of action against ML Defendants that are precluded under the doctrines of res judicata or collateral estoppel, including fraud and good faith and fair dealing claims similar or identical to those already dismissed by the Court. Plaintiffs also assert flawed derivative claims

¹ Capitalized terms not otherwise defined herein have the meanings set forth in ML Defendants' November 19, 2021 letter to the Court (Dkt. No. 93).



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similar to those dismissed by the Court, although they are now asserted on behalf of ML Fashion, LLC, rather than Gooberry Corp.

Plaintiffs' New York state court complaint is also remarkably similar to the proposed Second Amended Complaint (the "Proposed SAC") that Plaintiffs previously filed in this action. *Compare* Exhibit A *with* Dkt. No. 70-4. The New York complaint names as defendants the same individuals and entities named as defendants in the Proposed SAC, with the exception of MLG Retail, LLC. The New York complaint contains dozens of paragraphs that are word-for-word, or otherwise nearly, identical to paragraphs in the Proposed SAC. Based upon ML Defendants' initial review, it appears that all but four of the 24 causes of action in the New York complaint are essentially the same as causes of action in the Proposed SAC.

Apparently, Plaintiffs did not want to risk an adverse ruling from this Court on a motion for leave to amend. Instead, they opted to shop for what they perceive to be a potentially more favorable forum to assert many of the same claims that the Court either already dismissed, or which Plaintiffs intended to file in this Court as part of the Proposed SAC. Plaintiffs did so while attempting to mislead the Court and Defendants into thinking that the New York complaint had not yet been filed.

ML Defendants respectfully submit that the foregoing is further confirmation that the Court should strike the Notice, deny the Extension Request, and enter a judgment dismissing this action with prejudice. ML Defendants also again request that the Court strongly consider sanctioning Plaintiffs for their gamesmanship.

Respectfully submitted,

SEYFARTH SHAW LLP

/s/ Jesse M. Coleman

Jesse M. Coleman

JMC

cc: Counsel of record (via ECF)